

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 06-0455
Income Tax
For the Tax Period 2002

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ISSUE

1. Gross Income Tax-Imposition

Authority: IC § 6-8.1-5-1(b); IC § 6-2.1-2-2; IC § 6-2.1-3-25(b).

The Taxpayer protests the imposition of gross income tax.

STATEMENT OF FACTS

The Taxpayer is a corporation. It is one of three related business organizations. The Taxpayer and Corporation B joined together to form a Partnership. For federal income tax purposes, Corporation B and the Partnership are treated as disregarded entities. The Taxpayer filed a separate Indiana Gross Income Tax return. The Taxpayer files Indiana Adjusted Gross Income Tax as part of a consolidated return. The Partnership receives service fees from Indiana customers. The Indiana Department of Revenue (Department) assessed additional Indiana Gross Income Tax, penalties, and interest against the Taxpayer on the fees for services provided to Indiana consumers. The Taxpayer protested this assessment. The Taxpayer withdrew its protest as to the assessment of additional tax resulting from adjustments removing items of Adjusted Gross Income and apportionment figures from its separate Indiana Gross Income Tax filing. A hearing was held and this Letter of Findings results.

1. Gross Income Tax-Imposition

Discussion

The Department assessed the Taxpayer additional gross income tax on the service fees the Partnership received from Indiana customers against the Taxpayer pursuant to IC § 6-2.1-2-2(a)(2) which imposes a gross income tax on

the taxable gross income derived from activities or businesses or any other sources within Indiana by a taxpayer who is not a resident or a domiciliary of Indiana.

The Taxpayer argues that it is not subject to the imposition of the additional gross income tax because it does not receive the income. Rather, the service fees are paid to the Partnership which qualifies for exemption from gross income tax pursuant to IC § 6-2.1.3-25(b) as follows:

Gross income received by a partnership is exempt from gross income tax. However, gross income is not exempt from the gross income tax if it is received by a publicly traded partnership that is treated as a corporation for federal income tax purposes under Section 7704 of the Internal Revenue Code.

Indiana Department of Revenue assessments are prima facie evidence that the assessed taxes are owed by the Taxpayer. IC § 6-8-1-5-1(b). The Taxpayer bears the burden of proving that the assessment is incorrect. Id.

The issue to be determined in this case is whether or not the partnership exists for gross income tax purposes.

Unlike the Indiana Adjusted Gross Income Tax, the Gross Income Tax does not incorporate by reference the Internal Revenue Code and Treasury Regulations. The federal disregarded entity status controls the Taxpayer's Indiana Adjusted Gross Income Tax. The Partnership and Corporation B are not disregarded entities for Indiana Gross Income Tax purposes. The Partnership is in existence for Indiana Gross Income Tax purposes and actually receives the Indiana service fees. Therefore, the Partnership would be the entity subject to Indiana Gross Income Tax. As a partnership, however, the partnership qualifies for exemption pursuant to IC § 6-2.1.3-25(b). The Department improperly imposed the Indiana Gross Income Tax on the Taxpayer.

Finding

The Taxpayer's protest is sustained.